

DISESTABLISHING PATERNITY

In 2001, the law changed to allow for a court to disestablish paternity and terminate an obligation to provide child support due to non-paternity. To do so, either parent may file a petition with the appropriate JDR or Circuit Court to disestablish paternity. The court will then order genetic testing to be completed. A parent may request genetic testing for any of his or her children. The individual seeking the test is obligated to pay for it, normally in advance.

An individual may request genetic testing even if there was a previous acknowledgment of paternity, previous finding of paternity, or previous genetic tests. If genetic tests were conducted in the past, the court may require the party seeking the test to demonstrate why the test needs to be repeated before ordering the new tests. Genetic test results from private companies will not be accepted by the court.

Besides ordering testing, the court is required to appoint an attorney for the child whose paternity is in question. This attorney is known as a *Guardian ad Litem*; he or she represents only the interests of the child. The Guardian ad Litem will interview both the child and the parents and will make a report as to what he or she determines as being in the best interest of the child. If the genetic test indicates that the individual is not the biological father of the child, the court may decide to disestablish paternity if it is in the best interest of the child to do so--which may not be the same as what is in the best interests of the parents. The court does not have to disestablish paternity nor relieve the obligation to pay child support. A court will not disestablish paternity, regardless of genetic test results or best interests of the child, if the individual named as the father:

- acknowledged paternity knowing that he was not the father; or
- legally adopted the child; or
- knew that the child was conceived through artificial insemination.

If the court chooses not to disestablish paternity, any obligation to pay child support would continue as ordered. If the court chooses to disestablish paternity and relieve an obligation to pay current child support, the obligation can only be terminated from the date the petition for disestablishment was legally served on the other party. Any amount due and owing prior to the date of service is still owed and enforceable as child support arrears. Child support arrears cannot be waived or forgiven.